IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:19.02.2007

Coram:

The Honourable Mr.Justice J.A.K.SAMPATH KUMAR

A.S.No.469 of 1993

1. Subramaniam
2. Rajaram
3. Rani
4. Rajagopal
5. Krishnan
6. Gnanapragasam
7. D.Raju
8. Vadamalai
9. Sambandamurthy
10. Sinnaraj
11. Thangavel Asari
12. Thulasingam
13. Thangaraj
14. Natesa Pather
15. Muthuvel
16. Soosainathan
17. Kaliyan
18. Lakshmi
19. Dhandapani
20. Mangalakshmi
21. Palani
22. Subramanian
23. Sivalingam
24. Arumugam
25. P. Kannan
26. V. Kannan
27. Arunachalam
28. Durairaj
29. Balu Pathar
30. Selvaraj
31. Sankaralingam
32. Balakrishnan
33. Ramalingam
34. Natarajan
35. Kaliyan
36. Devaraj
37. K.Ramadoss
38. Ramasami

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39.Govindammal
40.Sathyamoorthy
41.Subramanian
42.Perumal
43.Panchatcharam
44.Krishnamoorthy
45.Sekar
46.Ashok
47.Veerappan
48.Kannan
49.Sanjeevi
50.Kumarasami
51.Jayaraman
52.Kaliyan
53.Mohan
54.Rathinambal
55.Baskaran
56.Kaliyaperumal
57.Neelamegam
58.Devaki
59.Palani
60.Gajendran
61.Kumar
62.Valli
63.Kothandam
64.Murugan
65.Rukmani
66.Kumarasami Pathar
67.Kannan
68.Mumtaz
69.Mani Achari
70.Sadasivam
71.Thiagarajan
72.Lakshmi Ammal
73.Pattammal
74.Ramakrishnan
75.Babu

..Appellants 1 to 75/
Defendants 1 to 19,
21 to 63,65 to 77

..vs..

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1.Sri Devanathaswami Devasthanam,
represented by its Executive
Officer Sri.S.Veerappan.

2.Osai Mani

..Respondents /
Plaintiff and
64th defendant.

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Appeal is filed against the Judgment and decree dated 28.02.1991 made in O.S.No. 3 of 1987 on the file of the Principal Subordinate Judge, Cuddalore.

For Appellants : Mr.M.N.Padmanabhan, Senior Advocate
for M/s. Mr.M.N.Muthukumaran
and Mr.S.Palanisamy

For Respondents : Mr.R.Sunilkumar
for Mr.Yashod Varadhan

JUDGMENT

This appeal is filed against the judgment and decree dated 28.02.1991 in O.S.No.3 of 1987 on the file of the Principal Subordinate Court, Cuddalore, in and by which the learned Sub Judge after analyzing the evidence in depth decreed the suit as prayed for.

2. For convenience, the parties are referred as arrayed in the suit.

3. The plaintiff states as follows:

The suit property, which was originally comprised in Survey No.32, was subsequently sub-divided into 32/1 and 32/2. Later, a portion of the land in the sub division has been acquired by the Government along with the other items in R.S.29 for a public purpose of locating a Government Basic Girls' Training School. The property is situate on the road leading to Thiruvendhipuram, from Tiruppapuliyur in continuation of the Lawrence Road and Subbaraya Chetty Street and surrounded on all sides by houses and house sites. Though, originally it was classified as arable land and was really leased out as agricultural land for agricultural purposes, it has ceased to be used as such by the temple as the adjacent properties forming one block have been acquired by the Government as aforesaid for building purposes. The suit property, therefore, is now fit only as house sites.

4. The Masimaha Mandapam, constructed in the suit plot is used for the purpose of the Mandagapadi endowed for that purpose by one Venkatasami Naicker when the deity which is taken from the temple to the sea on the 'MASIMAHAM DAY' is made to rest for a while at the Mandapam and during the period or rest palanquin bearers and other followers accompanying the deity, used the suit property as place of rest.

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5. While so, the defendants who had been unauthorisedly occupying the Highways Road by putting up thatched houses along the road by encroaching thereon were evicted by the Highways Department. The defendants thereupon in a body removed all their belongings and with materials of the sheds they had put on the road, they unauthorisedly trespassed upon the suit property about six years back and indiscriminately put up thatched houses on the suit property. They had no right to occupy the property belonging to the temple without the knowledge or consent of the temple authorities. The plaintiff issued notices to defendants on 18.7.1984, but they have not cared to either comply with the demands in the notices or send a reply.

6. The defendants are mere trespassers and they have no right to occupy the suit property belonging to the temple. The plaintiff is not able to predicate to each defendant the respective portion of the property in their enjoyment but they have all constructed their houses within the area comprised in the suit property. Since the relief of recovery of vacant possession of the suit property from the defendants arises out of a series of acts of trespass committed by the defendants in common concert and if separate suits are brought against each of them, common question of law and fact would arise all these defendants are joined together as per order I Rule 3 of C.P.C. Hence, the suit.

7. The written statement of Defendants 4,49 and 71, adopted by the Defendants 9 and 77, reads as follows:

The plaintiff is not entitled to file a suit for mere recovery of possession. Such a suit is not maintainable and, however, barred by limitation. It is true that the suit property is now fit for house site only. The suit property does not belong to the plaintiff nor there was any endowment in favour of the plaintiff in respect of the suit property. Hence, the plaintiff is not at all entitled for relief of recovery of possession.

8. These defendants and their predecessors in the family settled in the suit property from time immemorial and their possession and enjoyment is supported by evidences for atleast 30 to 40 years. These defendants are in possession and enjoyment of the suit property openly, adversely and continuously for more than 30 years and they have prescribed title to the property by adverse possession.

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9. The defendants' enjoyment is substantiated by enrolment in Election Roll and by various implementation of Government Scheme. The defendants have formed a society by name 'Bharathi Nagar koothapakkam, Kudisai Vazhvour Sangam ' which is representing the suit property and the local authority is providing roads, electricity and water to the suit property for more than 15 years. The Government of TamilNadu and the defendants have spent several lakhs of rupees for promoting the suit property into a habitable colony and the plaintiff has at no point of time asserted its title or interference. Hence, the suit is liable to dismissed.

10. One Mr. Veerappan was examined as PW.1. Ex.A1 to Ex.A5 were marked on the side of the plaintiff. Defendants 68,71,50,57 and 53 were examined as DW.1 to DW.5; Defendants 67,58,76,14,37,17,26,56,34,72,28,60, 1,35,13,55,46,45,65,63, 66,2,5,6,18,31,52,and 70 were examined as DW.7 to DW.34; Defendants 67,74,44,27,41,61,7,32 and 25 were examined as DW.36 to DW.44. 49th defendant was examined as DW.48. M/s.Rajagopal, Devaki, Anjammal, Sivalingam, Govindammal and Jacob were examined as DW.6, DW.35, DW.45, DW.46, DW.47 and DW.49 respectively. Ex.B1 to Ex.B246 were marked on the side of the defendants to confront the claim of the plaintiff.

11. The Lower Court after analyzing both oral and documentary evidence in depth found that the plaintiff is entitled to suit claim and accordingly decreed the suit. The present appeal is filed, against the said judgment and decree, by the defendants.

12. Heard Thiru. M.N.Padmanabhan, the learned senior counsel for appellants and Thiru. R.Sunilkumar, the learned counsel for respondents.

13. Upon hearing the rival claims, the points for determination are:-

1) Whether the defendants are the trespassers in the suit land?
2) Whether the plaintiff is the owner of the suit property?
3) Whether the plaintiff is entitled to protection under Section 109 of the TamilNadu Hindu Religious and Charitable Endowment Act?
4) Whether the findings of the Lower Court in decreeing the suit is in order?

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14. Point No.1:-

Even according to the pleadings of the defendants they are not the owners of the land. The defendants submitted that they are the trespassers in the suit property. The defendants admitted that their predecessors have settled in the suit property from time immemorial. They also admitted that they are in possession of the suit property at least for 30 to 40 years. I am satisfied that the defendants are the trespassers in the suit property and occupying the same against the interest of the plaintiff. Hence, this point is answered accordingly.

15. Point No.2:

It is the specific case of the plaintiff that they are the absolute owners of the suit property. They examined PW.1 and marked Ex.A1, Ex.A2 and Ex.A5 to prove that the plaintiff are the absolute owners of the suit property. In fact, the plaintiff claim absolute right of the suit property and issued a lawyer's notice to the defendants to vacate and hand over the suit property. Ex.A3 is the copy of the said notice. The defendants acknowledged the said notice. Ex.A4 is the proof to this effect. The plaintiff have asserted the title in respect of the suit property, which was not confronted by the defendants though they received the said notice from the plaintiff. The learned counsel for the appellants/defendants would contend that the ownership of the land by the plaintiff was not proved by any title deed. So, I have to find out whether the objection of the learned counsel for the appellants/defendants with regard to the title of the suit property by the plaintiff can sustain. Ex.A1 is the H.R & C.E. Proceedings. The said proceedings is dated 17.8.49/09.09.49. According to the said proceedings, the plaintiff is the absolute owner of the suit land. Ex.A2 is the Patta for the disputed land in the name of the plaintiff. Ex.A5 is the Chitta for the suit land in favour of the plaintiff. These documents would show that the plaintiff is the absolute owner of the suit property.

16. The first page of Ex.A1 reads as follows:

"PROCEEDINGS OF THE ASSISTANT COMMISSIONER
Present: Sri A.Ramachandran, M.A., B.L.,
Assistant Commissioner.

In Re: Sri Devanayakaswami Temple,
Trivendipuram Village, Cuddalore Taluk,
South Arcot District.

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Sub : Register of Properties - Approved by the Board - Forwarded and Directions issued.

Ref : Board's Order No. 4394 G Dated 17.8.49
Order No.174 Dated 8.9.49

...

1. Recorded.
2. One copy of the Register is forwarded to the trustee of the above temple who is required to have the register annually verified under Section 39 of the Act and to report additions and alterations if any for the approval of the Board.

Sd.A.Ramachandran.
Assistant Commissioner.

/Forwarded By Order/

/sd/ xxxxxx
9.9.49
HEAD-CLERK

ksr
To
The Trustee of Sri etc.,
Encl: One Register.

This Register is of the year 1949. In this register, it is specifically stated that the suit property belongs to the plaintiff temple. In pursuance of ownership of the land in the name of the plaintiff, patta was also issued. Ex.A2 is the Patta. The plaintiff have been paying necessary kists for the suit property. Ex.A5 is the copy of Chitta Register. The above documents on the face of it would prove that the plaintiff is the owner of the suit property ever since 1949. The defendants are not claiming title to the suit property. They are also not claiming right to the property by virtue of any registered document. They have not set up any right to suit property in favour of third parties. The defendants can claim right of adverse possession only against the lawful owner. The defendants at one stage claim right of adverse possession in respect of the suit property. At the same time, they are disputing the title of the plaintiff which they are not supposed to do so as they claim right of adverse possession only against the lawful owner. The Lower Court also considered these documentary evidence, rightly held that the plaintiff are the owners of the property. The Counsel for the appellant in fact relied on the decision reported in

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1)"Jagadish Narain ..vs.. Nawab Said Ahmed Khan" reported in "A.I.R (33) 1946 Privy Council Page 59";

2)"Moran Mar Basselios Oatholicos and another .. vs.. Most Rev.Mar Poulosoe Athanasius and others" reported in "A.I.R 1954 S.C Page 526";

3)" Smt. Sawarni ..vs.. Smt. Inder Kaur and others" reported in 1996 (6) S.C.C Page 223;

4)" Sankalchan Jaychand Bhai Patel and others .. vs.. Vithalbhai Jaychand Bhai Patel and others" reported in "1996 (6) S.C.C Page 433";

5)"Balwant Singh and another ..vs.. Daulat Singh (Dead) by Legal Representatives and others" reported in " 1997 (7) S.C.C Page 137";

6)"Arasappan Karayalar and another ..vs.. Subramania Karayalar" reported in "2001-1 L.W Page 724";

7)" N.S. Spance ..vs.. D.S. Kanagarajan and another " reported in "2005 (1) C.T.C Page 494";

8)"Kartari Devi and others ..vs.. Udham Singh and others " reported in "A.I.R 1997 Himachal Pradesh Page 70";

9)"Dhanapal Chettiar and others ..vs.. Govindaraja Chetty and others" reported in "A.I.R 1961 Madras Page 262";

10)"Secretary of State for India in Council .. vs.. Debendra Lal Khan" reported in "1934 L.W Page 257 (Privy Council)";

11)"Munshi Bashir Ahmad ..vs.. Nederlandsche Handel Maatschapij" reported in "A.I.R. 1937 Rangoon Page 180";

12)" Kuppuswami Nainar ..vs.. The District Revenue Officer, Thiruvannamalai and others" reported in "1995-1 M.L.J Page 426";

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13)"Guruvammal and another ..vs.. Subbiah Naicker and 5 others" reported in "2000 -1 L.W Page 488".

and contended that unless the plaintiff proves title to the property by documentary evidence, they cannot maintain the suit. I have carefully gone through the facts referred in those decisions. The facts referred in these decisions are with reference to the rival claims of the parties to the proceedings. Each one claim independent right by virtue of documentary evidences. Only in such contingencies, findings rendered in those decisions.

17. Here is the case where the plaintiff alone claims title to the suit property by virtue of documents. No one claims title to the suit property by virtue of any documents. It is also not the case of the defendant that some one claim right of ownership of the suit property. The defendant is also not claiming title of the property by virtue of any document. In fact, the learned counsel for the respondent/plaintiff relied on the following decisions to confront the claim of the appellants/defendants.

1)"Santhakula Sowmiyanarayana Kavaraya Community Endowments, through its trustees M.K.Perumal and another ..vs.. Vellayappa Pillai and others " reported in "91 L.W Page 285";

2)"Rajanarayana Perumal Temple, Melaiyur, Sirkali Taluk, by its Executive Officer .. vs.. Rethinam Pillai" reported in "1979-1 M.L.J Page 159";

3)"Naganna B. Ningappa ..vs.. Shivanna B. Ningappa" reported in "A.I.R 2004 Karnataka Page 209";

4)"Govindaswamy ..vs.. Mottayan Chettiar" reported in "1968-II M.L.J (Notes of Recent Cases) Page 83";

5)"C.R. Palanidoss and 5 others ..vs.. S.Arumugham and 11 others" reported in "2003 (2) C.T.C Page 10".

18. Admittedly, the suit property belongs to Religious Institutions. As per the principle of 'parent patriarch' court is the custodian of the idol property. The disputed land belongs to

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the idol. The documentary evidence would show that the suit property belongs to the idol. So, the decision relied on by the counsel for the respondent/plaintiff squarely applicable to the case on hand. Since, the cases referred in decisions cited by the counsel for the appellants/defendants are not related to the facts on hand, I am of the view that the said decisions are not applicable to the case on hand. Hence, this point is in favour of the plaintiff.

19. Point No.3:

It is the specific case of the defendant that they derived title to the property by way of adverse possession. They also relied on documents Ex.B1 to Ex.B246 in support of their claim. The learned counsel for the respondent/plaintiff drew my attention to section 109 of the Tamil Nadu Hindu Religious and Charitable Endowment Act, 1959 and submitted that the temple land is protected under the said section. Originally, this act came into force from 19.11.1959 onwards. The law prevails at that time is as follows:

> "Sec.109 of the Principle Act
> 109. Property of religious institution not to vest under the law of limitation after the 30th September 1951:- Nothing contained in any law of limitation for the time being in force shall be deemed to vest in any person the property or funds of any religious institution which had not vested in such person or his predecessor-in-title before the 30th September,1951."

20. There is nothing to show that the defendants were in possession of the disputed property before 30.9.1951. The documents filed by the defendants also would not show that the defendants were in possession of the disputed property even prior to 30.9.1951. Subsequently, the law changes and section 109 of the said Act has been amended and it has given effect from 1.9.2003. It reads as follows:

> "109. Central Act 36 of 1963 not to apply for recovery of properties of religious institutions :- Nothing contained in the limitation Act, 1963 (Central Act 36 of 1963) shall apply to any suit for possession Immovable properties belonging to any institutions or for possession of any interest or of any interest in such property."

In such view of the fact, Limitation Act 1963 is not applicable to the properties of the Religious Institutions. The Lower Court has also dealt this point in that line and rightly answered in favour of the plaintiff. There is no error or illegal in the findings of the Lower Court in this regard. I do not find any infirmity or impropriety in the findings of the Lower Court in this regard. The findings of the Lower Court is in order and does not require any

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interference. Hence, this issue is answered in favour of plaintiff.

21. Point No.4:

In view of the findings rendered in Points 1 to 3, I am satisfied that the Lower Court has rightly answered in favour of the plaintiff and decreed the suit. There is no error or illegal in the findings of the Lower Court in this regard. I do not find any infirmity or impropriety in the findings of the Lower Court in this regard. The findings of the Lower Court is in order and does not require any interference. Hence, this issue is answered in favour of plaintiff.

22. In the result, this appeal fails and accordingly dismissed. However, the parties have to bear their respective costs. Connected C.M.P stands dismissed.

mra

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To
1.Principal Subordinate Judge, Cuddalore.
2.The Section officer, VR Section, High Court, Madras.

+ one cc to Mr. R. Yashod Vardhan, Advoate sr no. 9694

PV(CO)
NM(03.04.07) A.S.No.469 of 1993

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